

STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

Christel Van Dyke)	
)	
vs.)	
)	Docket 01-0257
Illinois Bell Telephone Company)	
)	
Various complaints as to billing and service in Tinley Park, Illinois.)	

BRIEF OF ILLINOIS BELL TELEPHONE COMPANY

Illinois Bell Telephone Company (“Ameritech Illinois”) submits this brief following the hearing on the merits of the above-captioned proceeding:

FACTS

Christel Van Dyke was an Ameritech Illinois residential customer until her service was disconnected in the spring of 2000 for non-payment of charges. The final bill for her account had an unpaid balance of \$167.38. Resp. Ex. 2. Until approximately March 1, 2000, her telephone number was 708-614-0032; her telephone number from March through the date of disconnection was 708-614-9793. Tr. at 206, 218-19; Resp. Ex. 1. During the period of the dispute, she lived with her two children, currently ages 14 and 17. Tr. at 295-96.

Ms. Van Dyke did not pay her bill because the inability of Ameritech Illinois to correct service quality problems that she believed were present. Tr. at 75. These problems included the presence of static or other voices on the line, the receipt of harassing calls, and the fact that callers sometimes received a busy signal although she was not using the phone. Tr. at 72, 112. She also claimed that her bill had doubled for no reason and that Ameritech billed her for local and long-distance calls she did not make. Tr. at 117-20, 122. These problems did not occur every day (Tr. at 74), however, and she was never completely without service because she always could get the phone to work. Tr. at 265. Ms. Van Dyke testified that the problems began sometime after 1993 (Tr. at 150)¹ and continued intermittently through the date of disconnection. Ms. Van Dyke also claimed that Ameritech Illinois billed her for service after her account had been disconnected. Tr. at 210.

Services and Features

Ms. Van Dyke had a number of features or services on her account, including Call Waiting, Call Pack 250, and Call Control. The Call Waiting feature notifies a customer who already is using her line that she is receiving another call. Tr. at 231-32. The customer can disable this feature by dialing *70 prior to placing a call; such disabling would cause a subsequent caller would hear a busy signal if the customer were on the phone. Tr. at 232.² The Call Pack 250 service allows a customer to make up to 250

¹ The first entry in Ameritech Illinois' trouble history for the account is dated May 3, 1994. See Resp. Ex. 12, p. 26.

² Computer modems can be programmed to disable call waiting prior to dialing up the customer's Internet service provider. Tr. at 232. Ms. Van Dyke had a computer in her home (Tr. at 299), which was used to access the Internet. See Complaint, p. 3. Ms. Van Dyke testified that she did not know if the Call Waiting feature was disabled while her children used the computer. Tr. at 300-01.

untimed calls within Illinois for a flat monthly fee. Tr. at 231. The Call Control feature allows a customer to limit calling from her line by “locking up” the line for outgoing calls. Tr. at 233. The customer can “unlock” the line by dialing *95 (and a security code) before placing a call and “lock up” the line again by dialing *95 (and the security code) after completing a call. Tr. at 237-38. If the phone has been “unlocked,” Call Control does not become operative again until the customer calls *95 to “lock up” the line. Tr. at 240. Each call to *95 is billed as a local call. Tr. at 238; Resp. Ex. 4.

Call Control was placed on Ms. Van Dyke’s account sometime between August 1998 and November 1998. Tr. at 241-42, 303-04; Comp. Group Ex. 1 (August 1998 bill); Resp. Ex. 5 (November 1998 bill). Ms. Van Dyke testified that she always had the Call Control activated and that her children did not know the security code. Tr. at 267-68. In addition, if she did give her children the security code so they could make a call, she would then change the code. Tr. at 316-17. In a March 1999 letter to the Illinois Attorney General’s office, Ms. Van Dyke complained that she had been charged for excessive calls “for years” but stated that use of the Call Control feature had “normalized” her bill. Resp. Ex. 7 & Tr. at 306.

The addition of these services and features to Ms. Van Dyke’s account caused her charges for monthly service to increase. The charges for monthly service on her September 1996 bill totaled \$21.47. Tr. at 307 & Comp. Group Ex. 1 (September 1996 bill). In October 1998, after Call Control, Call Pack 250, Caller ID and Caller Name

Display had been added to the account, the monthly service charges totaled \$54.67. Tr. at 308, 310-11 & Resp. Ex. 5.

Usage

Ms. Van Dyke kept a hand-written log in which she recorded the calls she made on a particular day. See Tr. 134-35, 316 & Resp. Ex. 8. As a general matter, the log does not identify the telephone number called but instead provides the name of the person called (e.g., “Mary”) and perhaps the time of the call. Tr. at 318 & Resp. Ex. 8. The entries for some days consist simply of hash-marks for each call made or a statement that a certain number of calls were made, with no further identifying information. Tr. at 319-20 & Resp. Ex. 8. The log covers only limited segments of the period for which Ms. Van Dyke disputes her usage: in particular, December 6, 1997 through January 5, 1998; November 21 through December 26, 1998; May 7 through June 10, 1999; and May 1 through May 22, 2000. See Resp. Ex. 8, 11.

Ameritech Illinois provided Ms. Van Dyke with Message Unit Detail (“MUD”) records showing the local calls made from her line during various months. See Tr. at 131, 133, 135, 225-26; Comp. Group Ex. 3. She testified that it was “impossible” for her to have made the number of calls the MUD records attributed to her on certain days (Tr. at 132), but did not identify any specific disputed calls on the MUD records. Tr. at 131. She also testified that, by comparing her log and the MUD records, the Administrative Law Judge (“ALJ”) could “judge for yourself” the number of extra calls for which she was charged. Tr. at 131. She admitted, however, that, without knowing the telephone

numbers of the persons named in her log, it would be difficult to compare the log and the MUD records. Tr. at 320-21.

Ms. Van Dyke provided more specific information about long-distance calls she was disputing. She identified calls on four bills (Comp. Group Ex. 1 (October 1996, February 1998, March 2000, and June 2000 bills)) that she claimed not to have made. Tr. at 139-42, 147, 224, 271-72, 285. Almost all of the calls were to locations outside Illinois, and the charges for those calls, without tax, totaled \$15.61. See Comp. Group Ex. 1 (October 1996, February 1998, March 2000, and June 2000 bills). Her bills also show that, at least three times (Comp. Group Ex. 1 (September 1996, June 1998 and March 2000 bills)), she received credits from long-distance carriers. These credits totaled \$32.39.³ Ms. Van Dyke testified that she knew that she could raise disputes about long-distance calls with the long-distance company attributing the calls to her. Tr. at 313.

Harassing Calls

Ms. Van Dyke attributed the harassing calls her daughter and she received to the problems with her telephone service. Tr. at 113. Ultimately, however, her complaint with regard to harassing calls seemed to arise from the refusal of Ameritech Illinois to disclose to her the identity of persons making the unwanted calls. Tr. at 282, 360-62.

³ Ms. Van Dyke received a \$1.02 credit from AT&T, a \$15.97 credit from HOLD Billing Services, and a \$15.40 credit from Sprint. See Comp. Group Ex. 1 (September 1996, June 1998 and March 2000 bills); Tr. 303, 314. It is not always possible to tell how much of these credits is reimbursement for taxes.

At Ms. Van Dyke's request, Ameritech Illinois put a trap and trace on her line in late 1998. Tr. at 280 & Comp. Ex. 4. The results of the trace were reported to her local law enforcement agency and she was advised to seek further information from that agency. See Comp. Ex. 4. Ameritech Illinois provides information about the identity of a person making harassing calls only to the police and not to the customer reporting the harassment. Tr. at 247.

Repair Efforts

Ms. Van Dyke made numerous complaints about her service, and Ameritech Illinois sent out repair technicians many times. The trouble history for Ms. Van Dyke's account from May 1994 through June 2000 contains at least 50 entries, and a technician was dispatched to check on her service 31 times. Resp. Ex. 12, 13, 14.⁴ Of the 31 times when a technician was dispatched, on eight occasions, the technician could not gain access to Ms. Van Dyke's residence but found no problem with the Ameritech Illinois facilities connecting to her residence. Tr. at 382-83; Resp. Ex. 14. On another eight occasions, the technician had access to the residence but found no problem with the line. Tr. at 383-84; Resp. Ex. 14. On five occasions, the technician found a problem with Ms. Van Dyke's equipment or wiring and made repairs where appropriate. Tr. at 385-93; Resp. Ex. 14. On 10 occasions, the technician took actions regarding Ameritech Illinois facilities, frequently without any confirmation that there was a problem with those

⁴ No dispatch was made on 11 of the repair calls because the issue reported could be resolved through a referral or other information. Resp. Ex. 14 & Tr. at 381. No dispatch was made on another 11 calls because remote testing found no problem with Ms. Van Dyke's line. Resp. Ex. 14 & Tr. at 380-82.

facilities. Tr. at 393-406; Resp. Ex. 14.⁵ These actions included changing, several times, segments of the cables that provided Ms. Van Dyke's service (Tr. at 395-96, 396-98, 400-02, 402-03, 404) and changing the grid through which her service was provided in the Ameritech Illinois central office. Tr. at 405-06. Chuck Mason, an Ameritech Illinois repair foreman, testified that the company took all reasonable steps to try and resolve the problems reported by Ms. Van Dyke, including changing cables and central office equipment, checking jacks, and replacing jacks. Tr. at 415.

Mr. Mason also discussed potential causes of the service problems Ms. Van Dyke experienced. Moisture or humid conditions could cause static and cross talk on a telephone line. Tr. at 410, 429-30, 432. A damaged jack or wiring in the customer's residence also could cause problems with static or dial tone. Tr. at 410, 427, 434. Mr. Mason stated that the additional billing of which Ms. Van Dyke complained could not be caused by moisture or by the various jack, cable or equipment problems found on the line. Tr. at 430-32. Theft of service, however, could cause one customer to be billed for calls made by someone else. Tr. at 430. Part of a technician's routine in investigating a trouble report involves checking for theft of service. Tr. at 414-15, 439. Although Ms. Van Dyke reported concerns that her line was tapped (see Tr. at 388-89 & Resp. Ex. 12, p. 10), Ameritech Illinois never found evidence of theft of service. Tr. at 389.

⁵ In cases where a customer reports chronic trouble, Ameritech Illinois sometimes will change its facilities based on suspicion of a problem. Tr. at 393-94.

Post-Disconnection Billing

The parties disagreed about when Ms. Van Dyke's service was disconnected. Ameritech Illinois records show that service was disconnected on June 8, 2000 (Tr. at 203-04, 207-08 & Resp. Ex. 1, 2), and it billed her for service only through that date. Resp. Ex. 2 & Tr. 207-08. Although Ms. Van Dyke testified that the disconnection occurred on May 8 (Tr. at 83), her log of outgoing telephone calls contains entries after that date. Tr. at 328 & Resp. Ex. 11. In addition, she only filed a complaint with the Better Business Bureau, complaining about the disconnection, on June 8. Tr. at 327 & Resp. Ex. 10. Finally, the trouble history for her account shows that she reported trouble with her service on June 5 and June 8, 2000. Resp. Ex. 13, p. 1.

Post-Complaint Service Issues

Ms. Van Dyke filed a formal complaint with the Commission on March 9, 2001. Several weeks later, Ameritech Illinois voluntarily reconnected Ms. Van Dyke's service under a different number. Tr. at 77-78 & Resp. Ex. 9. Over Ameritech's objection (see, e.g., Tr. at 148-50), Ms. Van Dyke testified at length regarding problems with her current service. Tr. at 78-79, 145-47, 149. In particular, Ms. Van Dyke testified that she had to have operator assistance to make outgoing calls because, when she attempted to dial directly, she heard a recorded message that something was "not valid." Tr. at 79. Ameritech Illinois billed Ms. Van Dyke for 119 directly dialed local calls in May 2001, as well as five local toll calls made with operator assistance. Tr. at 365-66, 368 & Comp. Group Ex. 1 (May 2001 bill).

Ameritech Illinois witness Loretta Wells explained that a customer who has not selected a primary long-distance carrier for her account cannot directly dial long-distance calls. Tr. at 214-15. Similarly, a customer who has not selected a local toll carrier cannot directly dial local toll calls. Tr. at 215-16. Ms. Van Dyke testified that she did not select either type of carrier after Ameritech Illinois reconnected her service in April 2001. Tr. at 323-24.

Relief

Ms. Van Dyke's complaint seeks a variety of monetary and other relief. She requests a refund of charges for calls she allegedly did not make, a refund of charges for "caller code" bills (presumably the monthly charge for Call Control), and deletion of the outstanding final bill for the account. Complaint, pp. 2, 4. She also requests compensation for her cellular telephone bills from the period after her phone was disconnected and for her aggravation and inconvenience. Id. at 2. She also asks that Ameritech Illinois be ordered to fix the problems with her service. Id.

The only documentary evidence admitted into the record relating to Ms. Van Dyke's damages are various Ameritech Illinois bills (Comp. Group Ex. 1; Resp. Ex. 2, 3, 5) and two receipts, totaling \$55, for "an emergency phone" in February 2000. Tr. at 341, 343.⁶ The ALJ did not admit her bills for cellular telephone service (Tr. at 443) and stated that she could not recover any "incidental expenses." Tr. at 338.

⁶ Ameritech Illinois cannot determine, from the transcript, the exhibit number(s) assigned to the two receipts.

ARGUMENT

The presentation of Ms. Van Dyke's claims at trial was chaotic, despite the best efforts of the ALJ. She constantly raised new issues regarding her former telephone service and interjected numerous questions regarding her current service, which was connected after she filed her complaint. After substantial effort during the first day of hearing to organize and copy the mass of papers Ms. Van Dyke had with her, she brought additional documents the second day of hearing and referred to still more documentation that she had at home. See, e.g., Tr. at 282. The ALJ ultimately admitted most of her documentary evidence in bulk form. See Tr. at 291-92; Comp. Group Ex. 1 (Ameritech Illinois bills); Comp. Group Ex. 2 (pages of handwritten diaries); Comp. Group Ex. 3 (usage-related records). Much of this material was not specifically identified or discussed during the testimony, so that its relevance is unclear. Moreover, neither the billing nor the usage-related records cover the entire six-year period involved in Ms. Van Dyke's claims.

It is well established that the complainant bears the burden of proving her case before the Commission. See, e.g., Champaign County Telephone Co. v. Illinois Commerce Comm'n, 37 Ill.2d 312, 321 (1967); City of Chicago v. Illinois Commerce Comm'n, 13 Ill.2d 607, 616-17 (1958). Ms. Van Dyke failed to meet this burden in the most fundamental sense. She simply dumped a pile of paper into the record, accompanied only by a general description of her problems – leaving the ALJ and Ameritech Illinois to try to make sense of it all. This failure to meet her burden of proof,

by itself, requires denial of Ms. Van Dyke's claims. Nevertheless, there are more specific reasons why her claims should be denied, as discussed in the following sections.

I. THE COMPLAINANT CANNOT RECOVER A REFUND FOR ANY SERVICE PROVIDED PRIOR TO MARCH 1999.

Regardless of the exact claims asserted by Ms. Van Dyke, the relevant statutes of limitations preclude any claim for a refund of charges paid prior to March 1999, two years prior to the filing of her complaint here. Accordingly, the maximum refund period that can be supported by the record – assuming Ms. Van Dyke otherwise establishes her claims – is from approximately March 1999 through the date of disconnection in 2000.

To the extent that Ms. Van Dyke's claims relate to service quality or outage issues, they are governed by Section 9-252 of the Public Utilities Act. Section 9-252 provides that such claims "shall be filed with the Commission within 2 years from the time the produce [sic], commodity or service as to which complaint is made was furnished or performed." 220 ILCS 5/9-252. The complaint in this case was filed on March 9, 2001. As a result, putting aside any factual or legal issues affecting the merits of her claims, Ms. Van Dyke cannot lawfully be awarded a refund for service prior to March 9, 1999.

Ms. Van Dyke's claims arising from incorrect billing are governed by Section 9-252.1 of the Public Utility Act. That section requires that a complaint "relating to an incorrect billing . . . be filed with the Commission no more than 2 years after the date the

Customer first has knowledge of the incorrect billing.” 220 ILCS 5/9-252.1. The record here shows that Ms. Van Dyke was aware of the allegedly incorrect billing for local usage sometime prior to March 8, 1999, when Ameritech Illinois responded to her complaint to the Illinois Attorney General’s office on that issue. See Comp. Ex. 5. Indeed, her March 21, 1999, letter to the Attorney General stated that the problem of excessive billing for local calls had “persisted for years” and was the reason she had subscribed to the Call Control service. Resp. Ex. 7. She filed the Complaint here on March 9, 2001, and thus can recover only for incorrect billings in the preceding two-year period.

II. THE COMPLAINANT’S EXCESSIVE BILLING CLAIMS FAIL FOR LACK OF PROOF.

Ms. Van Dyke claims that her bills were incorrect and excessive in several ways. She was billed for local calls she allegedly did not make, she was billed for long-distance calls she allegedly did not make, and her bill for monthly service supposedly doubled for no reason. Ms. Van Dyke failed to carry her burden of proof on most of these claims, and evidence in the record either refutes them or explains how Ameritech Illinois could have billed her as it did. In addition, the Commission cannot consider claims arising from improper billing for interstate telephone service.

As discussed above, Ms. Van Dyke bears the burden of proving her case before the Commission. See, e.g., Champaign County Telephone Co. v. Illinois Commerce Comm’n, 37 Ill.2d 312, 321 (1967). She failed to meet that burden both regarding the

local calls she claims not to have made and the increase in her bill for monthly service. Although she testified that it was “impossible” that she made all the calls appearing on her MUD records (Tr. at 132), she did not identify any specific calls on those records for which she should not have been billed. Instead, she put the burden on the ALJ to compare the MUD records and her own incomplete call log, and to determine the number of extra calls for which she was charged. Tr. at 131. Even she admitted, however, that such a comparison would be difficult given the manner in which she made entries in the call log. Tr. at 320-21. Indeed, because the call log does not cover the entire period of allegedly excessive billing, and because Ms. Van Dyke did not introduce MUD records for the entire period, what is “impossible” here is making any determination of how many local calls could have been inappropriately billed. Similarly, although Ms. Van Dyke claims that her bill for monthly service doubled for no reason (Tr. at 120), she failed to identify specific charges on her bills that she did not authorize and that caused the increase.

A complainant must do more than simply assert that she has been overcharged; she must identify the specific items she is disputing. Ms. Van Dyke has failed to carry that burden regarding her disputed local calls and excessive service charges.

Moreover, the record contains an explanation both for the increase in Ms. Van Dyke’s monthly service charges and for the presence of more calls in the MUD records than Ms. Van Dyke remembers making. Her monthly service charges went up over time simply because she added features and services to her account. For example, these

charges increased from \$21.47 in September 1996 to \$54.67 in October 1998. Tr. at 307, 308. During that period, however, she subscribed to four new services, which added more than \$30 to the monthly service charges. See Tr. at 310-11.

In fact, one of those new services – Call Control – could explain why Ms. Van Dyke’s local usage was higher than she thought. As Ameritech Illinois witness Loretta Wells explained, a customer with Call Control must make a local call (by dialing *95) both to “unlock” her phone before making a call and to “lock” her phone again afterwards. Tr. at 237-38. Ms. Van Dyke testified that she regularly made use of Call Control and even changed her security code after her children used the phone. Tr. at 267-68, 316-17. That could mean that, when she thought she was making one call, she was actually making three: one call to unlock the phone, one call to contact the person she wanted to reach, and one call to lock up the phone again.

In contrast to her claim of excessive local usage, Ms. Van Dyke did identify, on four bills, specific long-distance calls that she claimed not to have made. Tr. at 139-42, 147, 224, 271-72, 285. Ameritech Illinois should not be required to refund the cost of those calls, however, because she already has received approximately double the amount of the disputed charges in credits from long-distance carriers. The total amount of the disputed calls was \$15.61, without tax. See Comp. Group Ex. 1 (October 1996, February 1998, March 2000, and June 2000 bills). The total amount of credits from long-distance carriers was \$32.39. See Comp. Group Ex. 1 (September 1996, June 1998 and March 2000 bills). She is not entitled to further reimbursement for these calls.

There is a more fundamental reason why Ms. Van Dyke cannot receive relief from the Commission for these disputed long-distance calls: they are outside the Commission's jurisdiction. Almost all of the calls were to locations outside Illinois (see Comp. Group Ex. 1 (October 1996, February 1998, March 2000, and June 2000 bills). Disputes about such calls fall within the authority of the Federal Communications Commission. See Citizens Utility Board v. Illinois Commerce Comm'n, 315 Ill. App. 3d 928, 936 (3rd Dist. 2000).

III. THE COMPLAINANT FAILED TO PROVE AMERITECH ILLINOIS WAS RESPONSIBLE FOR HARASSING CALLS SHE RECEIVED.

Ms. Van Dyke also failed to prove that Ameritech Illinois should be liable because she received harassing telephone calls. Although she testified that Ameritech Illinois was responsible for the harassing calls received by her daughter and her (Tr. at 112-13), she provided no evidence indicating why the company was responsible for the calls. For all the record discloses, the calls could have been made by someone who already knew Ms. Van Dyke's telephone number, rather than resulting from the supposedly crossed lines about which she complained.

Ameritech Illinois complied with Ms. Van Dyke's request in late 1998 to put a trap and trace on her line. It successfully traced the calls and reported the results to her local police, pursuant to company policy. See Comp. Ex. 4; Tr. at 247. At bottom, Ms. Van Dyke's complaint on this issue seems to be that Ameritech Illinois should have disclosed the caller's identity to her. Tr. at 282, 360-62. She failed to establish (and

indeed cannot establish) why the company's conduct is actionable before the Commission.

IV. THE RECORD SHOWS THAT AMERITECH ILLINOIS RESPONDED IN A SATISFACTORY MANNER TO THE COMPLAINANT'S SERVICE PROBLEMS.

Ms. Van Dyke claims that the various service problems she encountered over a six-year period result from Ameritech Illinois' failure to repair her line in a professional manner. Based on the facts in the record, the company responded in an appropriate and timely manner to the many service complaints Ms. Van Dyke made.

As an initial matter, the record is clear that Ms. Van Dyke's service problems occurred only intermittently and generally involved a diminution in service quality, rather than a complete loss of service. Tr. at 72. In fact, she testified that she was always able to get the phone to function in some manner. Tr. at 265.

Because of the service problems, she contacted the Ameritech Illinois repair center approximately 50 times between May 1994 and June 2000, and technicians were dispatched to check on her service 31 times. See Resp. Ex. 12, 13, 14. With 16 of these dispatches, the technicians examined all wiring to which they could gain access and found no problems with the Ameritech Illinois facilities connecting to her residence. See Resp. Ex. 14; Tr. at 382-84. With five other dispatches, the technicians found a problem with Ms. Van Dyke's equipment or wiring and made repairs where appropriate. See Resp. Ex. 14; Tr. at 385-93. The remaining 10 dispatches resulted in some change to

Ameritech Illinois facilities, although usually these changes were made merely because of suspicion that there could be a problem with the facilities, rather than because of a confirmed problem. See Tr. at 393-406; Resp. Ex. 14. The changes included switching various segments of the cable linking Ms. Van Dyke's line to the Ameritech Illinois central office, as well as switching equipment for her line within the central office. See Tr. at 393-406. The company took all reasonable steps to resolve the problems reported by checking jacks, replacing jacks, and changing cables and central office equipment. Tr. at 415.

Chuck Mason, an Ameritech Illinois repair foreman, testified that moisture or humid conditions could cause the static and cross talk Ms. Van Dyke experienced. Tr. at 410, 429-30, 432. He added that damaged jacks or wiring, such as the technicians found (and repaired) in Ms. Van Dyke's home, also could cause problems with static or affect dial tone. Tr. at 410, 427, 434. In addition, the trouble history for the account contained no evidence of theft of service. Tr. at 389.

The Commission recently considered a complaint involving similar telephone repair issues. See Order, Pendleton, Stein and Moon, Ill. C.C. Dkt. 99-0454 (Apr. 17, 2001) (Attachment A). The complainant there similarly lodged multiple complaints with Ameritech Illinois regarding static, cross talk, and lack of dial tone; its lines also worked properly much of the time. Attachment A at 2. Ameritech Illinois technicians made multiple visits to the complainant's offices, examined the wiring to which they could gain access, and made various repairs. Id. at 3. The Commission concluded that the company

“responded satisfactorily” to the service problems alleged, and it denied the complaint.
Id. at 4.

The same result is appropriate here. Ameritech Illinois sent technicians out many times to analyze Ms. Van Dyke’s claimed service problems and made repairs when necessary. The company took all reasonable steps to resolve her problems; nothing more is required.

V. THE RECORD SHOWS THAT AMERITECH ILLINOIS DID NOT BILL FOR SERVICES PROVIDED AFTER DISCONNECTION.

Ms. Van Dyke failed to establish that Ameritech Illinois billed her for services provided after her line was disconnected. Two different types of Ameritech Illinois records – the screen notes and the June 2000 bill – show that the service was disconnected on June 8, 2001 (Resp. Ex. 1, 2; Tr. at 203-04, 207-08), and the June bill reflects a credit for any services previously billed that would have been provided after that date. Resp. Ex. 2 & Tr. 207-08. Although Ms. Van Dyke testified that the disconnection occurred on May 8 (Tr. at 83), her call log contains entries after that date (Resp. Ex. 11), and she contacted Ameritech Illinois for repairs on June 5 and 8. Resp. Ex. 13 at 1.⁷ The record supports a finding that the service was disconnected on June 8 and thus that the company billed her correctly.

⁷ Ms. Van Dyke ultimately expressed uncertainty about the date of disconnection. See Tr. at 355 (“all I know is that I thought I was disconnected in May”).

VI. THE COMMISSION CANNOT CONSIDER ANY POST-COMPLAINT SERVICE ISSUES.

Ms. Van Dyke presented evidence regarding supposed problems with her current service, which Ameritech Illinois re-established in April 2001, a month after she filed her complaint. Ordering relief for such problems would go beyond the Commission's authority in this proceeding.⁸

It is a fundamental legal principle that a Commission order cannot exceed the scope of the complaint it has before it. "If the ICC were permitted to enter an order that is broader than the written complaint filed in the case then it would be ruling on an issue of which the responding party had no notice and no opportunity to defend or address." Peoples Gas Light and Coke Co. v. Illinois Commerce Comm'n, 221 Ill. App. 3d 1053, 1060 (1st Dist. 1991); see Alton & Southern Railroad v. Illinois Commerce Comm'n, 316 Ill. 625, 629-30 (1925). The issues relating to Ms. Van Dyke's current telephone service could not have been raised in her written complaint because she did not have that service when the complaint was filed. Accordingly, any issues related to that service are irrelevant here.

⁸ In any event, it appears that the dialing problem Ms. Van Dyke described regarding her current service arises from her failure to select primary long distance and local toll carriers for her account. See Tr. at 214-16, 323-24.

VII. THE COMPLAINANT CANNOT RECOVER THE DAMAGES SHE SEEKS.

The relief sought by Ms. Van Dyke includes compensation for the cost of replacement cellular telephone service after her wireline telephone service was disconnected and compensation for her aggravation and inconvenience. The Ameritech Illinois tariff precludes recovery of such damages and, in any event, there is nothing in the record to support their recovery.

Ameritech Illinois' tariff specifically limits its liability for service errors, and clearly precludes recovery for any consequential damages arising from the disputed conduct here. Both the Illinois Supreme Court and this Commission have ruled that this limitation of liability provision precludes a customer from recovering any amount in excess of the cost of service for the term of the mistake supposedly made by the company. See In re Illinois Bell Switching Station Litigation, 161 Ill. 2d 233, 244 (1994); Order, Steppin on the Green v. Illinois Bell Telephone Co., Ill. C.C. Dkt. 96-0612 (Aug. 13, 1997) (Attachment B). In Steppin on the Green, the Commission denied a complaint seeking damages based on "lost business, grief and aggravation," relying on the limitation of liability provision in Ameritech Illinois' current tariffs. Attachment B at 3. As the Commission ruled, such damages "are beyond the scope of the Respondent's liability under tariff." Id. at 4.

Ms. Van Dyke's requests for compensation for her use of a cellular telephone service and for aggravation and inconvenience are similar to the claims rejected in

Illinois Bell Switching Station Litigation and Steppin on the Green. The limitation of liability provision in Ameritech Illinois' tariff, the validity of which has been confirmed by the Illinois Supreme Court and this Commission, clearly precludes the additional relief she seeks. Indeed, the judge here recognized as much when he stated that Ms. Van Dyke could not recover any "incidental expenses." Tr. at 338.

In addition, nothing in the record supports the recovery of such damages. The judge refused to admit Ms. Van Dyke's bills for cellular telephone service. Tr. at 338. These inappropriate and unsupported damage claims should be dismissed.

#

CONCLUSION

THEREFORE, for all of the reasons stated above, the Complaint should be denied. The Commission should specifically find that Ameritech Illinois did not bill Ms. Van Dyke for excessive calls or services, that it did not improperly bill her after her line was disconnected and that it responded in a satisfactory manner to her service quality problems. In addition, the Commission should find that most of Ms. Van Dyke's claims are time-barred, that many of her claimed damages should be dismissed as a matter of law, and that her post-complaint service issues are beyond the scope of this proceeding.

Respectfully submitted,

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